

REMARKS

This Amendment is submitted in reply to the Non-Final Office Action mailed on March 20, 2009. No fees are due herewith this Amendment. The Director is authorized to charge any fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 0112701-00477 on the account statement.

Claims 1-40 are pending. Claims 30 and 39 were previously withdrawn. In the Office Action, Claims 18, 19, 35 and 36 are rejected under 35 U.S.C. §112. Claims 1, 2, 4-9, 20-26, 28, 29, 31, 33, 37 and 40 are rejected under 35 U.S.C. §102(b). In response, Applicants have amended Claims 25, 28-29 and 35-36; have canceled Claims 2-3, 10-19, 27, 32, 34 and 38 without prejudice or disclaimer; and have newly added Claims 41-55. Neither the amendments nor the newly added claims add new matter. In view of the amendments and/or for at least the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 3, 10-17, 27, 32, 34 and 38 are objected to as being dependent upon a rejected base claim. The Patent Office asserts, however, that the claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. See, Office Action, page 3, lines 15-17. Accordingly, Applicants have newly added Claims 41-55, which contain the subject matter of originally filed and now canceled Claims 3, 10-19, 27, 32, 34 and 38. Further, because previous Claims 18 and 19 were dependent from allowable Claim 17, Applicants have also included these claims in the newly filed claims. The newly added claims are at least supported by the originally filed claims. Therefore, Applicants respectfully submit that Claims 41-55 are novel, nonobvious and distinguishable from the cited reference and are in condition for allowance.

Therefore, Applicants respectfully request that the objection of Claims 3, 10-17, 27, 32, 34 and 38 be reconsidered and withdrawn and Claims 41-55 be passed to allowance.

In the Office Action, Claims 18, 19, 35 and 36 are rejected under 35 U.S.C. §112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Patent Office asserts that the phrases "said cam mechanism" in Claim 18, "the common support" in Claim 35, and "the rectilinear guide means" in Claim 36 lack antecedent basis. In response, Applicants note that

Claim 18 has been canceled and Claim 52, which replaces previous Claim 18, now has proper antecedent basis for "said cam mechanism." Similarly, Claims 35 and 36 have also been amended to provide proper antecedent basis for the phrases "the common support" and "the rectilinear guide means," respectively. For at least these reasons, Applicants respectfully submit that Claims 18-19 and 35-36 fully comply with the requirements of 35 U.S.C. §112, second paragraph.

Accordingly, Applicants respectfully request that the rejection of Claims 18-19 and 35-36 under 35 U.S.C. §112, second paragraph be reconsidered and withdrawn.

In the Office Action, Claims 1, 2, 4-9, 20-26, 28, 29, 31, 33, 37 and 40 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,885,533 to Savage et al. ("*Savage*"). In view of the amendments and/or for at least the reasons set forth below, Applicants respectfully submit that *Savage* is deficient with respect to the present claims.

Independent Claims 1 and 40 recite, in part, systems for dispensing at least one liquid substance comprising a dispensing device further comprising retaining means for retaining the first connector element of each bag in a defined pre-connection position prior to interconnecting the first and second connector elements. As discussed in the specification, the space in the housing is adapted to receive an assembly of multiple bags, and each bag is provided with an associated first connector element, and a base element is provided interconnecting the first connector elements of the bags. The base element guarantees the exact pre-connection position of the first connector elements of the bags either onto the housing of the dispensing device or onto the actuator means. See, specification, page 3, lines 7-14.

Specifically, the dispensing device 100 is provided with retaining means 300 for retaining the first connector elements 5 of the bags 3 in a defined pre-connection position prior to interconnecting the first and second connector elements 5, 110. These retaining means 300 are located at the bottom side of the space 102, so that the bag-in-box is placed on top of those retaining means 300. The retaining means 300 may comprise a bracket 301 having a top face 302 on which two parallel rails 303 are mounted. The base 6 is provided with rails 7 at opposite side thereof, so that the rails 7 slidably co-operate with rails 303 of the retaining means. See, specification, page 8, lines 12-28. In contrast, Applicants respectfully submit that *Savage* fails to disclose each and every element of the present claims.

For example, with respect to independent Claims 1 and 40, *Savage* fails to disclose or suggest retaining means for retaining the first connector element of each bag in a defined pre-connection position prior to interconnecting the first and second connector elements as required, in part, by the present claims. Instead, *Savage* is entirely directed to a cartridge for a medical device that is used as a blood analyzer. See, *Savage*, Abstract. Figures 1 and 8 of *Savage* illustrate the movement of the cartridge when it is inserted into the main housing for blood analysis. However, Figures 1 and 8 do not teach that the blood analyzer (e.g., either the cartridge or the main housing) is capable of a pre-connection position in which the bag is retained and held inside the dispenser in a non-connected position. Indeed, to connect the cartridge and the main housing via the male/female connectors 106 and 108 of *Savage* to allow fluid to flow therebetween, the cartridge must continue moving downward and is not retained in a defined pre-connection position prior to interconnecting the cartridge and the main housing. As such, *Savage* cannot disclose retaining means for retaining the first connector element of each bag in a defined pre-connection position prior to interconnecting the first and second connector elements as is required, in part, by the present claims.

Currently amended independent Claim 28 recites, in relevant part, assemblies of bags filled with liquid beverage components. Currently amended independent Claim 29 recites, in part, bag-in-box assemblies comprising a box member and an assembly of bags therein filled with liquid beverage components. The amendments do not add new matter. The amendments are supported in the specification at, for example, page 7, lines 5-18. In contrast, Applicants respectfully submit that *Savage* fails to disclose or suggest each and every element of the present claims.

For example, *Savage* fails to disclose or suggest assemblies of bags filled with liquid beverage components and bag-in-box assemblies comprising a box member and an assembly of bags therein filled with liquid beverage components as required, in part, by the present claims. Instead, and as discussed above, *Savage* is entirely directed to a cartridge for a medical device that is used as a blood analyzer. See, *Savage*, Abstract. In fact, *Savage* fails to disclose or suggest dispensing beverage components at any place in the disclosure. Accordingly, *Savage* fails to disclose or suggest assemblies of bags filled with liquid beverage components and bag-

in-box assemblies comprising a box member and an assembly of bags therein filled with liquid beverage components as required, in part, by the present claims.

Further, anticipation is a factual determination that “requires the presence in a single prior art disclosure of each and every element of a claimed invention.” *Lewmar Marine, Inc. v. Barient, Inc.*, 827 F.2d 744, 747 (Fed. Cir. 1987) (emphasis added). Federal Circuit decisions have repeatedly emphasized the notion that anticipation cannot be found where less than all elements of a claimed invention are set forth in a reference. See, e.g., *Transclean Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364, 1370 (Fed. Cir. 2002). As such, a reference must clearly disclose each and every limitation of the claimed invention before anticipation may be found. For at least these reasons, Applicants respectfully submit that *Savage* fails to anticipate the presently claimed subject matter.

Therefore, Applicants respectfully request that the rejection of Claims 1, 2, 4-9, 20-26, 28, 29, 31, 33, 37 and 40 under 35 U.S.C. §102 as anticipated be reconsidered and withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

K&L GATES LLP

BY 

Robert M. Barrett
Reg. No. 30,142
Customer No. 29157
Phone No. 312-807-4204

Dated: June 10, 2009